

105TH CONGRESS  
2D SESSION

# S. 2109

To provide for an exchange of lands located near Gustavus, Alaska, and  
for other purposes.

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IN THE SENATE OF THE UNITED STATES

MAY 21, 1998

Mr. MURKOWSKI (for himself and Mr. STEVENS) introduced the following bill;  
which was read twice and referred to the Committee on Energy and Nat-  
ural Resources

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## A BILL

To provide for an exchange of lands located near Gustavus,  
Alaska, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Glacier Bay National  
5 Park Boundary Adjustment Act of 1998”.

6 **SEC. 2. LAND EXCHANGE AND WILDERNESS DESIGNATION.**

7 (a) IN GENERAL.—(1) Subject to conditions set forth  
8 in subsection (c), if the State of Alaska, in a manner con-  
9 sistent with this Act, offers to transfer to the United  
10 States the lands identified in paragraph (2) in exchange

1 for the lands identified in paragraph (3), selected from  
2 the area described in section 3(b)(1), the Secretary of the  
3 Interior (in this Act referred to as the “Secretary”) shall  
4 complete such exchange no later than 6 months after the  
5 issuance of a license to Gustavus Electric Company by the  
6 Federal Energy Regulatory Commission (FERC), in ac-  
7 cordance with this Act. This land exchange shall be sub-  
8 ject to the laws applicable to exchanges involving lands  
9 managed by the Secretary as part of the National Park  
10 System in Alaska and the appropriate process for the ex-  
11 change of State lands required by State law.

12       (2) The lands to be conveyed to the United States  
13 by the State of Alaska shall be determined by mutual  
14 agreement of the Secretary and the State of Alaska.  
15 Lands which will be considered for conveyance to the  
16 United States pursuant to the process required by State  
17 law are: (1) lands owned by the State of Alaska in the  
18 Long Lake area within Wrangell-St. Elias National Park  
19 and Preserve; or (2) other lands owned by the State of  
20 Alaska.

21       (3) If the Secretary and State of Alaska have not  
22 agreed on which lands the State of Alaska will convey by  
23 a date not later than six months after a license is issued  
24 pursuant to this Act, the State of Alaska shall convey  
25 (subject to the approval of the appropriate official of the

1 State of Alaska), and the United States shall accept, with-  
 2 in one year after a license is issued, title to land having  
 3 a sufficiently equal value to satisfy State and Federal law,  
 4 subject to clear title and valid existing rights, and absence  
 5 of environmental contamination, and as provided by the  
 6 laws applicable to exchanges involving lands managed by  
 7 the Secretary as part of the National Park System in Alas-  
 8 ka and the appropriate process for the exchange of State  
 9 lands required by State law. Such land shall be conveyed  
 10 to the United States from among the following State lands  
 11 in the priority listed:

12 COPPER RIVER MERIDIAN

- 13 1. T. 6 S., R. 11 E., partially surveyed,  
 14 Sec. 11, lots 1 and 2, NE $\frac{1}{4}$ , S $\frac{1}{2}$ NW $\frac{1}{4}$ , SW $\frac{1}{4}$ ,  
 15 and N $\frac{1}{2}$ SE $\frac{1}{4}$ ;  
 16 Sec. 12, NW $\frac{1}{4}$ ;  
 17 Sec. 14, lots 1 and 2, NW $\frac{1}{4}$ NW $\frac{1}{4}$ ,  
 18 Containing 838.66 acres, as shown on the plat of  
 19 survey accepted June 9, 1922.
- 20 2. T. 5 S., R. 11 E., partially surveyed,  
 21 T. 6 S., R. 11 E., partially surveyed,  
 22 Sec. 2, NW $\frac{1}{4}$ NE $\frac{1}{4}$  and NW $\frac{1}{4}$ ,  
 23 Containing 200.00 acres, as shown on the plat of  
 24 survey accepted June 9, 1922,
- 25 3. T. 6 S., R. 12 E., partially surveyed,  
 26 Sec. 6, lots 1 through 10, E $\frac{1}{2}$ SW $\frac{1}{4}$ , and SE $\frac{1}{4}$

1       Containing approximately 529.94 acres, as shown on  
2       the plat of survey accepted June 9, 1922.

3       (4) The lands to be conveyed to the State of Alaska  
4       by the United States under paragraph (1) are lands to  
5       be designated by the Secretary and the State of Alaska,  
6       consistent with sound land management principles, based  
7       on those lands determined by the FERC with the concur-  
8       rence of the Secretary and the State of Alaska, in accord-  
9       ance with section 3(b), to be the minimum amount of land  
10      necessary for the construction and operation of a hydro-  
11      electric project.

12      (5) The time periods set forth for the completion of  
13      the land exchanged described in this Act may be extended  
14      as necessary by the Secretary should the processes of  
15      State law or Federal law delay completion of an exchange.

16      (6) For purposes of this Act, “land” means lands,  
17      waters and interests therein.

18      (b) WILDERNESS.—(1) To ensure that this trans-  
19      action maintains, within the National Wilderness Preser-  
20      vation System, approximately the same amount of area of  
21      designated wilderness as currently exists, the following  
22      lands in Alaska shall be designated as wilderness in the  
23      priority listed, upon consummation of the land exchange  
24      authorized by this Act and shall be administered according  
25      to the laws governing national wilderness areas in Alaska.

1           (A) An unnamed island in Glacier Bay National  
2       Park lying southeasterly of Blue Mouse Cove in sec-  
3       tions 5, 6, 7, and 8, T. 36 S., R. 54 E., CRM, and  
4       shown on United States Geological Survey quad-  
5       rangle Mt. Fairweather (D-2), Alaska, containing  
6       approximately 789 acres.

7           (B) Cenotaph Island of Glacier Bay National  
8       Park lying within Lituya Bay in sections 23, 24, 25,  
9       and 26, T. 37 S., R. 47 E., CRM, and shown on  
10      United States Geological Survey quadrangle Mt.  
11      Fairweather (C-5), Alaska, containing approxi-  
12      mately 280 acres.

13          (C) An area of Glacier Bay National Park lying  
14      in T. 31 S., R. 43 E. and T. 32 S., R. 43 E., CRM,  
15      that is not currently designated wilderness, contain-  
16      ing approximately 2270 acres.

17      (2) The specific boundaries and acreage of these wil-  
18      derness designations may be reasonably adjusted by the  
19      Secretary, consistent with sound land management prin-  
20      ciples, to approximately equal, in sum, the total wilderness  
21      acreage deleted from Glacier Bay National Park and Pre-  
22      serve pursuant to the land exchange authorized by this  
23      Act.

24      (c) CONDITIONS.—Any exchange of lands under this  
25      Act may occur only if—

(1) following the submission of an acceptable license application, the FERC has conducted economic and environmental analyses under the Federal Power Act (16 U.S.C. 791–828) (notwithstanding provisions of that Act and the Federal regulations that otherwise exempt this project from economic analyses), the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370), and the Fish and Wildlife Coordination Act (16 U.S.C. 661–666), that conclude, with the concurrence of the Secretary of the Interior with respect to (A) and (B) below, that the construction and operation of a hydroelectric power project on the lands described in section 3(b)—

(A) will not adversely impact the purposes and values of Glacier Bay National Park and Preserve (as constituted after the consummation of the land exchange authorized by this section);

(B) will comply with the requirements of the National Historic Preservation Act (16 U.S.C. 470–470w); and

(C) can be accomplished in an economically feasible manner;

1           (2) The FERC held at least one public meeting  
2           in Gustavus, Alaska, allowing the citizens of Gusta-  
3           vus to express their views on the proposed project;

4           (3) The FERC has determined, with the con-  
5           currence of the Secretary and the State of Alaska,  
6           the minimum amount of land necessary to construct  
7           and operate this hydroelectric power project;

8           (4) Gustavus Electric Company has been grant-  
9           ed a license by FERC that requires Gustavus Elec-  
10          tric Company to submit an acceptable financing plan  
11          to FERC before project construction may commence,  
12          and FERC has approved such plan.

13 **SEC. 3. ROLE OF FEDERAL ENERGY REGULATORY COMMIS-**  
14 **SION.**

15          (a) LICENSE APPLICATION.—(1) The FERC licens-  
16          ing process shall apply to any application submitted by  
17          Gustavus Electric Company to FERC for the right to con-  
18          struct and operate a hydro power project on the lands de-  
19          scribed in subsection (b).

20          (2) The FERC is authorized to accept and consider  
21          an application filed by Gustavus Electric Company for the  
22          construction and operation of a hydro power plant to be  
23          located on lands within the area described in subsection  
24          (b), notwithstanding section 3(2) of the Federal Power  
25          Act (16 U.S.C. 796(2)). Such application must be submit-

1 ted within 3 years from the date of the enactment of this  
2 Act.

3 (3) The FERC will retain jurisdiction over any hydro-  
4 power project constructed on this site.

5 (b) ANALYSES.—(1) The lands referred to in sub-  
6 section (a) of this section are lands in the State of Alaska  
7 described as follows:

8 COPPER RIVER MERIDIAN

9 Township 39 South, Range 59 East, partially sur-  
10 veyed, Section 36 (unsurveyed),  $SE^{1/4}SW^{1/4}$ ,  
11  $S^{1/2}SW^{1/4}SW^{1/4}$ ,  $NE^{1/4}SW^{1/4}$ ,  $W^{1/2}W^{1/2}NW^{1/4}SE^{1/4}$ , and  
12  $S^{1/2}SE^{1/4}NW^{1/4}$ . Containing approximately 130 acres.

13 Township 40 South, Range 59 East, partially sur-  
14 veyed, Section 1 (unsurveyed).  $NW^{1/4}$ ,  $SW^{1/4}$ ,  $W^{1/2}SE^{1/4}$ ,  
15 and  $SW^{1/4}SW^{1/4}NE^{1/4}$ , excluding U.S. Survey 944 and  
16 Native allotment A-442; Section 2 (unsurveyed), frac-  
17 tional, that portion lying above the mean high tide line  
18 of Icy Passage, excluding U.S. Survey 944 and U.S. Sur-  
19 vey 945; Section 11 (unsurveyed), fractional, that portion  
20 lying above the mean high tide line of Icy Passage, exclud-  
21 ing U.S. Survey 944; Section 12 (unsurveyed), fractional,  
22  $NW^{1/4}NE^{1/4}$ ,  $W^{1/2}NW^{1/4}SW^{1/4}NE^{1/4}$ , and those portions  
23 of  $NW^{1/4}$  and  $SW^{1/4}$  lying above the mean high tide line  
24 of Icy Passage, excluding U.S. Survey 944 and Native al-  
25 lotment A-442. Containing approximately 1,015 acres.



1       (2) Additional lands and acreage will be included as  
2 needed in the study area described in paragraph (1) to  
3 account for accretion to these lands from natural forces;

4       (3) With the concurrence of the Secretary and the  
5 State of Alaska, the FERC shall determine the minimum  
6 amount of lands necessary for construction and operation  
7 of such project;

8       (4) The National Park Service shall participate as a  
9 joint land agency in the development of any environmental  
10 document under the National Environmental Policy Act  
11 of 1969 in the licensing of such project. Such environ-  
12 mental document shall consider both the impacts resulting  
13 from licensing and any land exchange necessary to author-  
14 ize such project.

15       (c) ISSUANCE OF LICENSE.—(1) A condition of the  
16 license to construct and operate any portion of the hydro-  
17 electric power project shall be the FERC's approval, prior  
18 to any commencement of construction, of a finance plan  
19 submitted by Gustavus Electric Company.

20       (2) The National Park Service, as the existing super-  
21 visor of potential project lands ultimately to be deleted  
22 from the Federal reservation in accordance with this Act,  
23 waives its right to impose mandatory conditions on such  
24 project lands pursuant to section 4(e) of the Federal  
25 Power Act (16 U.S.C. 797(e)).

1       (3) The FERC shall not license, re-license the  
2 project, or amend the project license unless it determines,  
3 with the Secretary's concurrence, that the project will not  
4 adversely impact the purposes and values of Glacier Bay  
5 National Park and Preserve (as constituted after the con-  
6 summation of the land exchange authorized by this Act).  
7 Additionally, a condition of the license, or any succeeding  
8 license, to construct and operate any portion of the hydro-  
9 electric power project shall require the license to mitigate  
10 any adverse effects of the project on the purposes and val-  
11 ues of Glacier Bay National Park and Preserve identified  
12 by the Secretary after the initial licensing.

13       (4) A condition of the license to construct and operate  
14 any portion of the hydroelectric power project shall be the  
15 completion, prior to any commencement of construction,  
16 of the land exchange described in this Act.

17 **SEC. 4. ROLE OF SECRETARY OF INTERIOR.**

18       (a) SPECIAL USE PERMIT.—Notwithstanding the  
19 provisions of the Wilderness Act (16 U.S.C. 1133–1136),  
20 the Secretary shall issue a Special Use Permit to Gustavus  
21 Electric Company to ensure the completion of the analyses  
22 referred to in section 3. The Secretary shall impose condi-  
23 tions in the permit as needed to protect the purposes and  
24 values of Glacier Bay National Park and Preserve.

1 (b) PARK SYSTEM.—The lands acquired from the  
2 State of Alaska under this Act shall be added to and ad-  
3 ministered as part of the National Park System, subject  
4 to valid existing rights. Upon completion of the exchange  
5 of lands under this Act, the Secretary shall adjust, as nec-  
6 essary, the boundaries of the affected National Park Sys-  
7 tem unit(s) to include the lands acquired from the State  
8 of Alaska; and adjust the boundary of Glacier Bay Na-  
9 tional Park and Preserve to exclude the lands transferred  
10 to the State of Alaska under this Act. Any such adjust-  
11 ments to the boundaries of the National Park System  
12 units shall have no effect upon acreage determinations  
13 under section 103(b) of the Public Law 96–487.

14 (c) WILDERNESS AREA BOUNDARIES.—The Sec-  
15 retary shall make any necessary modifications or adjust-  
16 ments of boundaries of wilderness areas as a result of the  
17 additions and deletions caused by the land exchange re-  
18 ferred to in section 2. Any such adjustments to the bound-  
19 aries of wilderness area shall have no effect upon acreage  
20 determination under section 103(b) of Public Law 96–  
21 487.

22 (d) PAYMENTS.—Gustavus Electric Company shall  
23 not be required to make Federal land payments under sec-  
24 tion 10(e) of the Federal Power Act (16 U.S.C. 803(e))  
25 with respect to the lands to be exchanged under this Act.

1       (e) CONCURRENCE OF THE SECRETARY.—Whenever  
2 in this Act the concurrence of the Secretary is required,  
3 it shall not be unlawfully withheld or unreasonably de-  
4 layed.

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